Remarks

Declaration Under 37 CFR § 1.131

The Examiner considered the Declaration of Mina M. Azad filed on December 1, 2006 (the

Declaration) under 37 CFR § 1.131, but found it to be insufficient to overcome the prior art

cited in the previous Office Action, since the Exhibits appended to the declaration do not

provide full support for the limitations in the claims as pending. Specifically, the Examiner

found that the Declaration contains no support for

> functions of determining a subpath to be segmented in the LSP, a function directed to defining
> segments in the subpath; a function directed to labeling each segment defined in the subpath; a
> function directed to notifying nodes in the LSP of the segmentation of the subpath and notifying
> the nodes information regarding a processing of DTUs labeled in accordance with the labels
> associated with the segments of the subpath; and LSRs having and/or lacking predetermined
> capability (OAM processing capability).

Applicant respectfully disagrees. The Declaration proves a date of conception of the claimed

invention of at least July 4, 2001. Bearing in mind that the disclosure appended to the

Declaration is an internal document for use within the Applicant's corporate structure, not

every limitation can be expected to have been stated in the same manner as it is in the claims

as pending. Applicant submits that it is the specification of the application that should provide

the enabling disclosure to allow the invention to be practiced by a person skilled in the art. In

accordance with 37 CFR § 1.131(b), the disclosure appended to the Declaration serves only

to prove that the invention was conceptualized by the inventor prior to the effective date of the

references cited by the Examiner. In support, MPEP § 715.07 states that "The purpose of filing

a [37 CFR 1.]131 affidavit is not to demonstrate prior invention, *per se*, but merely to antedate

the effective date of a reference."

Having regard to the functions for determining a subpath to be segmented, defining and

labeling segments in the subpath, the Examiner's attention is directed to Page 2 of Exhibit A to

the Declaration. A person skilled in the art of telecommunications would appreciate that the

overall LSP in an MPLS network traveled by a DTU is made up of several subpaths, each of

which can be defined as the portion of the network that a DTU travels in between two nodes.

This document teaches that a "wrapper turnes [*sic*] the LSP segment to a logical LSP that is

tied to the original LSP." This "logical LSP" provides support for the "subpath" as claimed, as it

is in essence a logically sectionalized portion of the path between the ingress and egress

LSRs of the LSP. See, for example, paragraph 9 on page 4 of the specification as filed.

Further, reading the document as a whole, it is implicit that turning a segment of an LSP into a logical LSP provides sufficient support for defining and labeling the segments themselves, remembering that the "L" in LSP refers to a label. Indeed, that is part of the function of the wrapper discussed in the exhibit. Accordingly, we respectfully submit that the Declaration demonstrates that the inventor had conceived the invention at least as claimed in Claim 24.

Having regard to the Examiner's finding that the Declaration does not provide support for the claimed "LSR's having and/or lacking predetermined capability (OAM processing capability)," the Examiner's attention is again drawn to the second page of Exhibit A to the Declaration. The third paragraph of that page discloses making "a logical mesh of OAM-capable LSRs." This refers to the capability found by the Examiner to be missing. In support of this interpretation, paragraph 21 of the specification indicates that "'OAM-capable' will be understood to mean capable of processing OAM DTUs or other specialized DTU used for maintenance and/or performance determination processes." Further, a person skilled in the art would appreciate that the disclosed OAM-capability supports the requisite functionality of "notifying nodes in the LSP of the segmentation of the subpath and notifying the nodes [of] information regarding a processing of DTUs labeled in accordance with the labels associated with the segments of the subpath." In further support, the second page of Exhibit A to the Declaration explicitly states that "the binding between the OAM wrapper and the original LSP is updated when there is a change in LSP forwarding information because Label Distribution Protocols are mandated to distribute attributes when distributing and updating labels." Accordingly, we respectfully submit that the Declaration demonstrates that the inventor had conceived the invention at least as claimed in Claims 25 and 26.

Rejections Under 35 USC § 112
The Examiner rejected claim 39 as indefinite. Specifically, the terms "receiver unit" and "subpath" lacked antecedent basis. Applicant has amended the claim to address the rejection. The "receiver unit" claimed refers to the "input module" stated earlier in the claim. The use of different terminology amounts to a distinction without a difference, and the reference to "receiver unit" has now been replaced with "input module." Applicant has also replaced the phrase "the subpath" with "a subpath" to overcome the second problem of indefiniteness found by the Examiner. Finally, Applicant has further amended claim 39 to correct a typographical

error unrelated to any of the Examiner's rejections. The claim now contains the phrase, "…in the MPLS and for assessing a performance of the MPLS, the LSR comprising…"

Rejections under 35 USC § 102 and 35 USC § 103

The Examiner rejected claims 24-29, 31, 34 and 39 as anticipated by US Publication No. 2003/0063613 to Carpini, or by US Publication No. 2002/0071390 to Reeves et al., depending on the specific claim in question. Further, the Examiner rejected claims 30, 32 and 33 as unpatentable over Reeves et al. in view of U.S. Publication No. 2002/0071390 to Mark et al., and claims 35-38 as unpatentable over Carpini in view of Mark. Applicant respectfully submits that because the Declaration under 37 CFR § 1.131 filed with our letter of December 1, 2006 and as argued herein establishes a date of conception of at least July 4, 2001 and subsequent due diligence, the references cited by the Examiner are not applicable against the present application. As such, the rejections under 35 USC § 102 and 35 USC § 103 are believed to be overcome, and allowance of the present application is hereby requested.

Conclusion

It is submitted that this application is now in condition for allowance, and action to that end is respectfully requested.

No fee is believed due for this submission. However, Applicant authorizes the Commissioner to debit any required fee from Deposit Account No. 501593, in the name of Borden Ladner Gervais LLP. The Commissioner is further authorized to debit any additional amount required, and to credit any overpayment to the above-noted deposit account.

Respectfully submitted,

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/Jeffrey M. Measures/

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